



Legislative Bulletin.....January 19, 2007

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H.R. 476—To amend title 5, United States Code, to make noncreditable for Federal retirement purposes any Member service performed by an individual who is convicted of any of certain offenses committed by that individual while serving as a Member of Congress

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$0

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 1

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 476—To amend title 5, United States Code, to make noncreditable for Federal retirement purposes any Member service performed by an individual who is convicted of any of certain offenses committed by that individual while serving as a Member of Congress (*Boyda, D-KS*)

Order of Business: The bill is reported to be scheduled for Friday, January 19th, under a motion to suspend the rules and pass the bill (subject to the passage of a rule allowing for suspensions of the rules on Fridays).

Summary: H.R. 476 would prohibit any years that a Member served as a Member of Congress from counting toward his or her retirement accruals, once convicted of certain crimes. In other words, this bill would make it harder for congressmen convicted of crimes, while serving in Congress, to collect their federal retirement benefits.

Specifically, the bill would prevent the service as a Member of Congress from being taken into account when calculating accrued benefits under the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS), if such Member has been "finally convicted" of an offense under the following sections of title 18, U.S. Code:

- Bribery of public officials and witnesses (section 201);
- Officers and employees acting as agents of foreign principals (section 219);
- Conspiracy to commit offense or to defraud the United States (section 371), to the extent it relates to the above two offenses or the restrictions on former officer, employees, and elected officials of the executive and legislative branches—section 207); or
- Perjury regarding the above offenses (section 1621).

The offense would have to have been committed while the individual was a Member of Congress, in direct relation to the Member's performance of his official duties, and **after the enactment of this legislation.**

A Member could still receive his or her lump-sum payment otherwise attributable to federal service as a Member of Congress (i.e. refunds of annuity contributions that he made—but NOT the government contributions or any paper gains), and could no longer participate in CSRS or FERS, as applicable. The Office of Personnel Management would be directed to prescribe regulations on these provisions, including any interest payable on the lump-sum payment, and the possible payment to the spouse or children of a convicted Member of the Member's whole retirement benefit (including service as a Member, as if the above provisions did not apply), given "the totality of the circumstances."

A "Member of Congress" is defined as the Vice President, a member of the Senate or the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

Additional Background: This legislation is nearly identical to Rep. Mark Kirk's Congressional Pension Forfeiture Act (H.R. 6172) from last Congress (never considered), which was extracted from section 601 of last Congress' lobbying reform bill (H.R. 4975), as passed by the House, when it was clear that a lobbying reform conference agreement was not going to materialize. H.R. 476 is similar to Rep. John Shadegg's Congressional Pension Accountability Act (H.R. 4546) from last Congress, reintroduced as H.R. 466 this Congress. The Shadegg legislation prohibits interest payments on contribution refunds and does not allow for payments to spouses and children of convicted Members.

This legislation is being offered largely in response to the actions of former Rep. Duke Cunningham (R-CA), who steered federal appropriations to entities in exchange for large personal benefits provided by such entities.

The Congressional Research Service (CRS) provides this background on CSRS and FERS:

Most civilian federal employees who began their careers before 1984 are covered by the Civil Service Retirement System (CSRS). Federal employees first hired in 1984 or later are covered by the Federal Employees' Retirement System (FERS). Both CSRS and FERS require participants to contribute toward the cost of the plans through a payroll tax. Employees who are covered by CSRS contribute 7.0% of pay to the Civil Service Retirement and Disability Fund (CSRDF). They do not pay Social Security taxes and are not eligible for Social Security benefits.

Employees who are covered under FERS contribute 0.8% of their full pay to the civil service trust fund and 6.2% of pay to Social Security on salary up to \$94,200 in 2006. The minimum retirement age under both CSRS and FERS is 55 for workers who have at least 30 years of service; however, starting in 2003, the FERS minimum retirement age began to rise for workers born after 1947, and it eventually will reach age 57 for employees born in 1970 or later.

FERS and CSRS also allow retirement with an unreduced pension at age 60 for employees with 20 or more years of service, and at age 62 for workers with at least 5 years of service.

The Thrift Savings Plan (TSP) is a *defined contribution* retirement plan similar to the "401(k)" plans provided by many employers in the private sector. In 2006, employees covered under either CSRS or FERS can contribute up to \$15,000 to the TSP. Employees age 50 and older can contribute an additional \$5,000 to the TSP.

Employees covered by FERS receive employer matching contributions of up to 5% of pay from the federal agency by which they are employed. Federal workers covered by CSRS also can participate in the TSP, but they receive no matching contributions from their employing agency.

The Office of Personnel Management (OPM) estimates the cost of CSRS to be an amount equal to 25% of employee pay. The federal government pays 18% of this amount and the other 7.0% is paid by employees. OPM estimates the cost of the FERS basic annuity at an amount equal to 12% of pay. The federal government contributes 11.2% of this amount and the other 0.8% is paid by employees. There are three other employer costs for employees covered by FERS. Both the employer and employee pay Social Security taxes equal to 6.2% of pay up to the maximum taxable amount; agencies automatically contribute an amount equal to 1% of employee pay to the TSP; and agencies also make matching contributions to the TSP.

At the start of FY2004, the Civil Service Retirement and Disability Fund had an *unfunded liability* of \$527 billion, consisting of a \$539 billion deficit for CSRS and a \$12 billion surplus for FERS. Although the civil service trust fund has an unfunded liability, it is not in danger of becoming insolvent. At no point over the next 75 years will the fund be exhausted. The Civil Service Retirement and Disability Trust Fund is invested in special-issue U.S. Treasury bonds.

For more information on these retirement systems, visit this webpage:

<http://www.congress.gov/erp/rl/pdf/98-810.pdf>.

RSC Bonus Fact: The U.S. Constitution does not provide for the *automatic* removal of a Member of Congress convicted of any crime. Article I, Section 5, Clause 2 provides that either House could (but does not *have to*) expel a Member—for any reason—with a two-thirds vote.

Committee Action: On January 16, 2007, the bill was referred to the Oversight and Government Reform Committee, as well as the Committee on House Administration, neither of which took subsequent public action.

Possible Conservative Concerns: Some conservatives might be concerned that this legislation would allow for the full payment of retirement benefits to the spouse or children of a convicted Member of Congress, since the convicted Member may still be able to gain access to such funds.

Cost to Taxpayers: This legislation would yield no costs to taxpayers and could yield (insignificant) savings to taxpayers.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks?: The earmarks rules do not apply, by definition, to bills considered under suspension of the rules.

Constitutional Authority: A committee report citing constitutional authority is unavailable. Article I, Section 6, Clause 1 of the Constitution provides that, “The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States.”

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